

DEC 15 2005

UNITED STATES
BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA**

In Re)	Chapter 13 Proceedings
PAUL BRYAN ANDERSON,)	Case No. BR-05-16575-ECF-CGC
Debtor.)	UNDER ADVISEMENT DECISION
)	RE: STAY RELIEF VIOLATION
)	

Before the Court is Debtor Paul Bryan Anderson's request for sanctions against Creditor Amal Pollack and her counsel Jaburg and Wilk, P.C. (collectively referred to as Respondents hereinafter) under 11 U.S.C. section 362(h). Debtor appears pro se. This matter originally arose in the context of Ms. Pollack's Motion for Relief from Stay, which this Court granted to allow the parties to return to the state court to liquidate any child support obligations owing by Debtor. In response to Ms. Pollack's stay relief motion, Debtor alleged that Ms. Pollack and her counsel willfully violated the automatic stay, thereby entitling him to recover damages, attorneys' fees, and punitive damages pursuant to 11 U.S.C. section 362(h). At the stay relief hearing on October 13, 2005, the Court instructed Debtor to file an affidavit or declaration under oath specifying the facts and circumstances of the stay violations and setting forth his claim for damages. Ms. Pollack was given an opportunity to respond. That having now been completed, the matter is deemed under advisement. No further hearing is necessary.

Debtor claims Ms. Pollack and her counsel violated the automatic stay on three separate occasions post-petition. The first violation allegedly occurred in his earlier bankruptcy case, 01-15762, when Respondents filed a Petition for Order to Show Cause Re: Contempt on February 12, 2004, in the state court divorce proceeding. The second violation allegedly occurred during the pendency of the Debtor's 2001 bankruptcy on or about January 13, 2005, when Respondents asked a hearing officer at an expedited services hearing to make a recommendation to the state court judge demanding collection of support arrears and incarceration of Debtor. The third

1 alleged stay violation occurred after Debtor filed this currently pending bankruptcy case¹ and when
2 Respondents continued with their contempt proceedings before the state court and filed various
3 documents in relation to those order to show cause proceedings. As a result of these stay
4 violations, Debtor contends he was damaged monetarily by incurring various attorneys' fees for
5 having to respond to the various improper state court proceedings and for having to file this
6 request for sanctions. In addition, he claims he was denied the "inexpensive and efficient venue
7 of Expedited Services" and prejudiced before the hearing officer in those proceedings.

8 11 U.S.C. section 362(h) allows "[a]n individual injured by any willful violation of a stay
9 provided by [section 362] . . . to recover actual damages, including costs and attorneys' fees, and,
10 in appropriate circumstances, may recover punitive damages." A willful violation does not
11 require a specific intent to violate the automatic stay: A violation may be willful if the alleged
12 violator knew of the stay and its actions were intentional. *See In re Bloom*, 875 F.2d 224 (9th Cir.
13 1989). Therefore, it is enough that Respondents knew of the stay and intentionally proceeded with
14 activities in state court and against Debtor without first seeking stay relief.

15 Respondents admit that the first two stay relief violations alleged by Debtor constitute
16 "technical" violations of the stay, but contend that they are "inconsequential, if anything."
17 Respondents further minimize the violations by denying any evil intent or desire to go beyond
18 clarifying "the record as to satisfy the Superior Court that it had authority to enforce current
19 support payments" and by justifying their actions by the fact that only a few days after technically
20 violating the stay in 2004, this Court ended up lifting the stay anyway. With respect to the third
21 stay violation, Respondents again argue that they were simply attempting to notify the state court
22 judge of Debtor's newly filed bankruptcy case in order to remove various matters from the court's
23 calendar until a motion to lift stay could be heard by this Court.

24 The Court finds in reviewing the parties' pleadings and the dockets in the two cases that
25 Respondents' willfully violated the automatic stay by pursuing various actions before the state
26 court and against Debtor after having knowledge of Debtor's bankruptcy Filings. No matter how
27

28 ¹Debtor filed this current bankruptcy on September 2, 2005.

1 right one may think they are in their position or how wrong they believe the debtor may be, stay
2 relief is required.

3 The question then becomes, however, whether Debtor suffered any actual damages as a
4 result. Debtor summarily asserts that he incurred various attorneys' fees in connection with
5 Respondents' actions, yet a review of the attorneys' fee invoices provided fails to establish that
6 these fees were incurred as a direct result of any stay violation. Some, in fact, were incurred as
7 part of the completely appropriate process of seeking stay relief before this Court and others
8 reflect work on fairly routine or generic work, such as communications between Debtor and his
9 counsel or Debtor's counsel and opposing counsel. Further, Debtor's claim that he was
10 prejudiced before the hearing officer at the expedited services hearing falls short of proving any
11 actual damage. Debtor never explains precisely how he was prejudiced or how he was denied the
12 expedited services procedures and damaged as a result.

13 Therefore, for the foregoing reasons, the Court denies Debtor's request for sanctions.
14 Counsel for Respondents is to lodge a form of order consistent with this decision for the Court's
15 signature.

16 So ordered.

17 DATED: Dec 12, 2005

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19 
20 CHAS. G. CASEY
United States Bankruptcy Judge

21 COPY of the foregoing mailed and/or via facsimile
22 this 12th day of December, 2004, to:

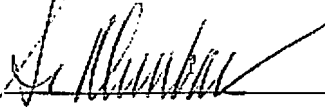
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